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INFO RUEHOO/CHINA POSTS COLLECTIVE PRIORITY
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RUEHKO/AMEMBASSY TOKYO PRIORITY 0136
RHMFISS/DEPT OF HOMELAND SECURITY WASHINGTON DC PRIORITY
RUCPDO/USDOC WASHDC PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RUEHGV/USMISSION GENEVA PRIORITY 2558
RHMFISS/FBI WASHINGTON DC PRIORITY
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C O N F I D E N T I A L SECTION 01 OF 03 BEIJING 003296

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E.O. 12958: DECL: 12/10/2019
TAGS: [CM](#) [ECON](#) [ETRD](#) [PGOV](#) [SCUL](#) [SOCI](#)
SUBJECT: INITIAL CHINESE REBUFF OF INDIGENOUS INNOVATION
DEMARCHE NOT THE LAST WORD

REF: SECSTATE 124680

Classified By: Econ Minister Counselor William Weinstein for reasons 1.
4 (b) and (d).

11. Confidential - entire text.

12. (C) SUMMARY: Ambassador Huntsman transmitted reftel demarche points under cover of a letter to the Ministers of MOST, MOF and the NDRC on December 9. Separately, emboffs on December 10 delivered reftel demarche to Ministry of Finance (MOF) Deputy Director General Wang Ying. Ms. Wang, MOFs lead on government procurement issues, asserted U.S. concerns were unwarranted. She gave a lengthy series of "clarifications" of the November 6 Circular, which she claimed in no way contradicted PRC commitments at the SnED and JCCT to treat Foreign Invested Enterprise (FIE)-produced products the same as domestic products for the purposes of government procurement. When pressed at the close as to whether her points represented China's official interagency response to our demarche, Wang demurred that it was instead her "personal" view, noting there would be further and extensive coordination with relevant agencies on this "very complicated" issue. She did not make any commitment to suspending the Circular's implementation. END SUMMARY.

12. (C) On December 09 Ambassador Huntsman transmitted reftel demarche points on indigenous innovation/government procurement under cover of a personal letter to Minister of Science and Technology (MOST) Minister Wan Gang, Minister of Finance Xie Xuren, and National Development and Reform Commission Chairman Zhang Ping. (Text of cover letter sent by email to Washington agencies). No direct responses to the Ambassador's communication have been received. MOF had turned down earlier urgent requests for meetings this week at the Director General (DG) level with Econ Minister Counselor Weinstein, as had the NDRC and Ministry of Science and Technology (MOST), claiming no appropriate official was available to receive the demarche. Eventually, Econ External Unit Chief Candy Green and Commerce's Market and Compliance Office Director Teresa Howes obtained an appointment to deliver reftel demarche on December 11 to Ministry of Finance (MOF) Deputy Director General of the Department of Treasury

Wang Ying (MOFs lead on government procurement and WTO Government Procurement Agreement (GPA) accession.)

13. (C) Stressing the importance the United States attaches to this issue, Green and Howes orally presented demarche points in their entirety and handed over an unofficial Embassy translation in Chinese. Ms. Wang said she was glad to discuss this issue of obviously serious concern to the U.S., noting the "unprecedented pressure" applied by the United States on this issue in the past few days. Wang cited the team of office directors by her side as proof of the matching seriousness of the PRC. She had received a copy of Ambassador Huntsman's letter to her Minister at the opening of business December 10 and had been working all day on preparing a response.

14. (C) Wang delivered a polite but lengthy monologue rebutting all the U.S. concerns as unwarranted. She averred that the subject circular (issued November 6 by MOST, MOF and NDRC) did not violate in any way the Chinese government's commitments on government procurement at the July SnED and October JCCT. Nor, she claimed, did it contradict the non-discrimination provisions of the WTO. The rationale: the circular's provisions are about "accreditation" of indigenous innovation products (IIPs) in a "broad sense", not about accreditation for IIPs under government procurement per se. (Wang later noted, however, that the PRC was considering formulation of a government procurement catalogue for IIPs - the next link in this chain - but that work was still incomplete. She did not see any logical contradiction here.)

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15. (C) Judging from our demarche, Wang continued, the United States also appeared to have "confused" the registration of IIPs with the registration of domestic (vice foreign) products. The PRC's SnED and JCCT commitments were in reference to the definition of domestic products. Definining IIPs was about intellectual property rights and innovation content, Wang elaborated, and not about domestic versus foreign products. China's government was fully committed to following up commitments it had made in the SnED and JCCT on giving equal treatment to products produced by FIEs in China. A separate process was underway for accreditation of domestic products.

16. (C) Furthermore, the PRC had been entirely open and transparent in this process, Wang opined, despite U.S. demarche concerns to the contrary. The PRC had published all the accreditation standards, application materials and procedures to qualify as an IIP. The Circular itself had been posted on web sites of the issuing agencies. After completion of the accreditation process, which would be managed centrally, the catalogue of qualifying products would also be published openly.

17. (C) Wang described at length the context and justification for China's concerted policies to promote indigenous innovation, noting that despite attracting large amounts of foreign investment and advanced technology, there still remained a gap between these advances and technical innovations being made in China. These "contradictions" restricted China's further development. Key policy initiatives (like the Circular in question) are now being developed to cultivate an admosphere in which technical and economic innovation can flourish. She said the United States also encourages indigenous innovation, noting satellite technologies and USG practices for identification of contractors (in strategic sectors) as examples.

18. (C) Green expressed appreciation for the detailed response from Wang and noted it would be communicated to Washington. Our initial reaction, however, was that U.S.concerns remained as stated in the demarche, and we strongly urged China to suspend implementation of the Circular until such time as our concerns regarding it had been fully addressed. She argued

that innovation and IPR could not be credibly separated from the products in which they were integrated for the purposes of meeting China's JCCT and SnED commitments. She also disputed China's transparency and openness in this process, noting that companies needed to be able to engage in dialogue with the PRC before standards were set to judge accreditation of IIPs -- not just read about them as a fait accompli. Howes pointed out that China's actions in this arena would chill innovation-heavy foreign investment and discourage economic growth in this area.

¶9. (C) Wang said she would convey the substance of the meeting to her Minister and be in close consultations with other PRC entities on this "very complicated" issue. She was not optimistic about suspending the implementation of the Circular's provisions, saying this process was a public one and such a delay would damage the government's credibility. Though Wang indicated at the outset that she had been investigating this issue with other involved agencies in preparation for our meeting, when pressed afterwards on whether her response represented an interagency cleared view she more cautiously stated it was merely her "personal" one.

¶10. (C) COMMENT: Future high-level pressure on the PRC, particularly in tandem with other concerned governments, could usefully continue to link our larger concerns over discrimination against non-indigenous IP to the most immediate goal of suspending the circular. We will also need to be prepared to respond to PRC rebuttals that USG procurement policies also support domestic innovation, particularly in strategic sectors. END COMMENT.

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HUNTSMAN